## PUBLIC PROSECUTOR v. AZMY ARIFF

**[R.Cr.J. (Hashim Yeop A. Sani J.) December 29, 1973]**
**[Kuala Lumpur — Selangor Criminal Revision No. 24 of 1973]**

*Criminal Law and Procedure — Plea of guilty by letter — Whether person charged under Income Tax Act, 1967 can plead guilty by letter — Criminal Procedure Code (F.M.S. Cap. 6), s. 137(ii).*

*Income Tax Act, 1967, s. 86(1) — Plea of guilty by letter — Whether magistrate can accept.*

The respondent had been charged with an offence under section 86(1) of the Income Tax Act, 1967. He pleaded guilty by letter and the learned magistrate accepted the plea and ordered the respondent to be admonished and discharged. Section 137(ii) of the Criminal Procedure Code allows a plea of guilty by letter only where the offence is punishable by fine only or imprisonment not exceeding three months or both.

**Held:** as the offence in this case was punishable with a fine not exceeding $1,000 or with imprisonment not exceeding six months or with both, section 137(ii) of the Criminal Procedure Code could not apply and the learned magistrate was wrong in accepting the plea of guilty by letter.

CRIMINAL REVISION.

*Lamin bin Haji Mohamad Yunos* (Deputy Public Prosecutor) for applicant.

Respondent in person.

**Hashim Yeop A. Sani J.:** The defendant before the magistrate was the precedent partner of a partnership charged for failing to submit a partnership return of income for the year of assessment 1972 under section 86(1) of the Income Tax Act, 1967, thereby committing an offence punishable under section 120 of that Act. The defendant pleaded guilty by letter. The magistrate, on the date fixed for hearing, accepted the plea; and on the strength of the plea in mitigation set out in the letter (to the effect that the accountant of the firm had been sick) ordered that the defendant be admonished and discharged.

The question here is whether the magistrate could lawfully accept the plea of guilty by letter after considering the provisions of section 120 of the Income Tax Act, 1967, read with section 137(ii) of the Criminal Procedure Code, F.M.S. Cap. 6. The ancillary question is whether section 137(ii) of the Criminal Procedure Code applies in the case of a law (like the Income Tax Act, 1967) which is silent on the right of a person to plead guilty by letter for an offence under that law.

As regards the main question, the magistrate was wrong in accepting the plea of guilty in this case. For section 137(ii) of the Criminal Procedure Code to apply, the punishment for the offence must be either a fine only or imprisonment only of a term not exceeding three months or both fine and imprisonment not exceeding three months; whereas punishment for an offence under section 86(1) of the Income Tax Act, 1967 is prescribed in section 120 of that Act which is a fine not exceeding $1,000 or to imprisonment for a term not exceeding six months or to both. Therefore section 137(ii) of the Criminal Procedure Code does not apply in this case.

With regard to the ancillary question where a law is silent on the question of plea of guilty by letter, it is obvious that section 137(ii) of the Criminal Procedure Code should apply provided that the punishment for the offence is within the scope of that section. The word "offence" in the Criminal Procedure Code is defined to mean any act or omission made punishable by any law for the time being in force. The Criminal Procedure Code is of general application in criminal procedure. The provisions of section 137(ii) of the Criminal Procedure Code would apply unless expressly excluded. The fact that there is a power to compound (section 124 of the Income Tax Act, 1967) does not, in my view, alter the position. The power to compound under that section is exercisable only before a conviction.

Section 137(ii) of the Criminal Procedure Code provides in clear terms that an accused person "desiring to plead guilty and be convicted and sentenced in his absence" may by letter addressed to the magistrate plead guilty and submit to pay any fine which may be imposed in respect of the offence and that section likewise in clear terms provides also that the magistrate may thereupon record a plea of guilty and convict him according to law. Therefore the magistrate has no alternative but to record the plea and convict the person before passing the appropriate sentence.

The order of the magistrate is therefore quashed and the case shall be sent back to the magistrate to be dealt with according to law.

*Order accordingly.*

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## PUBLIC PROSECUTOR v. YAP KOK MENG

**[A.Cr.J. (Hashim Yeop A. Sani J.) January 8, 1974]**
**[Kuala Lumpur — Criminal Appeal No. 57 of 1973]**

*Criminal Law and Procedure — Charges of possession of arms and of ammunition — Charge should contain sufficient particulars — Summary trial — Application to recall prosecution witness — Refusal by President of Sessions Court — Trial unsatisfactory — Criminal Procedure Code (F.M.S. Cap. 6), ss. 153(i), 173 and 316(a).*

In this case the respondent had been charged with possession of arms and possession of ammunition, offences under the Arms Act, 1960. At the trial, the prosecuting officer applied to recall a prosecution witness before the close of the prosecution case. The learned president of the Sessions Court refused the application.

**Held:** the refusal to allow the witness to be recalled was unjustified and as in the circumstances the learned president had not heard all the evidence of the prosecution, a retrial would be ordered.

*Cases referred to:-*

(1) *Pan Kok Wah* v. *Public Prosecutor* [1966] 2 M.L.J. 141.

(2) *Neo Koon Cheo* v. *R.* [1959] M.L.J. 47.

(b) *Mee Lian Co.* v. *Public Prosecutor* [1962] M.L.J. 131.

CRIMINAL APPEAL.

*Yaacob bin Haji Ismail* (Deputy Public Prosecutor) for the appellant.

*J. Nadchatiram* for the respondent.

**Hashim Yeop A. Sani J.:** This is an appeal by the Public Prosecutor against the order of acquittal by the learned President of the Sessions Court, Rawang. The respondent, Yap Kok Meng, was charged in the Sessions Court, Rawang with two offences under section 9(a) of the Arms Act, No. 21 of 1960. The charges read as follows: —